

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**FRYMIRE HOME SERVICES, INC.,  
AND WHITFIELD CAPITAL, LLC**

**Plaintiff,**

**VS.**

**LIBERTY MUTUAL INSURANCE  
CO. AND OHIO SECURITY  
INSURANCE CO.**

**Defendants,**

**CIVIL ACTION NO. 3:19-cv-1938**

## **DEFENDANTS' NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §1446(a) and Local Rule CV-81(a), Liberty Mutual Insurance Company (“Liberty Mutual”) and Ohio Security Insurance Company (“OSIC”) (collectively “Defendants”) file this Notice of Removal, hereby removing this action from the 44th Judicial District Court of Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division. Removal is based on diversity jurisdiction because there is complete diversity of citizenship between Plaintiffs Frymire Home Services, Inc. (“Frymire”) and Whitfield Capital, LLC (“Whitfield”) (collectively “Plaintiffs”) and Defendants, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

## I. INTRODUCTION

This dispute arises out of an insurance claim filed by Plaintiffs for alleged storm damage to property located at 2818 Satsuma Drive, Dallas, Texas. On June 5, 2019, Plaintiffs filed their Original Petition (the “Petition”) against Defendants in the 44th Judicial District Court of Dallas County, Texas. Plaintiffs allege that Defendants

breached a policy of insurance. Defendants further assert claims against Liberty Mutual for negligent and/or intentional misrepresentation, violations of certain provisions of the TEXAS INSURANCE CODE and TEXAS DECEPTIVE TRADE PRACTICES ACT (“DTPA”), and breach of good faith and fair dealing, by, among other things, failing to pay Plaintiffs’ claim for damages resulting from the storm. Defendants were served with a citation and a copy of the Petition on July 15, 2019 through their registered agent for service of process. Thus, this Notice of Removal is being filed within thirty (30) days of service of the Petition on Defendants and is timely filed under 28 U.S.C. §1446(b).

## **II. BASIS FOR REMOVAL**

### **A. THERE IS COMPLETE DIVERSITY OF CITIZENSHIP.**

#### **1. Plaintiffs are Citizens of Texas and California.**

Removal is proper because there is complete diversity between the parties. *See* 28 U.S.C. § 1332(a). The Petition alleges that Frymire is a Texas corporation with its principal place of business in Dallas County, Texas. *See* Petition at ¶ 3. Frymire is therefore a citizen of Texas for diversity purposes. As for Whitfield, “the citizenship of a[n] LLC is determined by the citizenship of all of its members.” *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Upon information and belief, Whitfield is a California citizen because its sole member/manager is an individual who is a California citizen.

#### **2. Defendants are Citizens of New Hampshire and Massachusetts.**

Liberty Mutual is a corporation organized under the laws of the State of Massachusetts, with its principal place of business in Boston, Massachusetts. For diversity purposes, Liberty Mutual is a citizen of Massachusetts. OSIC is a corporation organized under the laws of the State New Hampshire, with its principal place of business

in Boston, Massachusetts. For diversity purposes, OSIC is a citizen of both New Hampshire and Massachusetts.

**B. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00.**

Generally, the amount in controversy for purposes of establishing federal jurisdiction should be determined by the plaintiff's complaint. *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1411-12 (5th Cir. 1995). Here, it is apparent from the face of the Petition that Plaintiffs' claims exceed \$75,000.00 because Plaintiffs specifically plead that they "seek monetary relief more than \$1,000,000." *See* Petition at ¶ 2. Thus, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

**III.**  
**COMPLIANCE WITH PROCEDURAL REQUIREMENTS**

As required by Local Rule 81.1(a), filed concurrently with this Notice of Removal is a completed civil cover sheet, supplemental civil case cover sheet, and a signed Certificate of Interested Persons that complies with Local Rules 3.1(c), 7.4, and 81.2. Additionally, the following exhibits are attached:

- **Exhibit A:** Index of all documents filed in the state court action;
- **Exhibit B:** Dallas County Civil Case Sheet and;
- **Exhibits C-1 through C-6:** A copy of each pleading filed in the state court action.

Pursuant to Section 28 U.S.C. §1446(d), Defendants will provide written notice of the filing of this Notice of Removal to all adverse parties promptly after the filing of same and will file a true and correct copy of this Notice of Removal with the Court Clerk of the 44th Judicial District Court of Dallas County, Texas, promptly after the filing of same.

V.  
**REQUEST FOR RELIEF**

Based on the foregoing, Defendants Liberty Mutual Insurance Company and Ohio Security Insurance Company respectfully request that the above-styled action now pending in the 44th Judicial District Court of Dallas County, Texas be removed to the United States District Court for the Northern District of Texas, Dallas Division. Defendants further request all such other and further relief to which they are justly entitled.

Respectfully submitted,

/s/ Mark D. Tillman

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**ATTORNEYS FOR DEFENDANTS  
LIBERTY MUTUAL INSURANCE  
COMPANY AND OHIO SECURITY  
INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

In accordance with the FEDERAL RULES OF CIVIL PROCEDURE, on August 14, 2019, a true and correct copy of the above and foregoing instrument was served *via facsimile or electronic service* upon:

**ATTORNEYS FOR PLAINTIFFS**

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